BAIL SLIP.I

The Second Appellant in CA 629/99 herein namely Krishnamoorthy (Second Accused in SC No. 195/98 on the file of Prl. Sessions Judge, Cuddalore was directed to be released on bail as per order of this Court dt. 25/10/99 and made in Crl.MP.No. 6871/99.

II

The First Appellant in CA 629/99 herein namely Annadurai (First Accused in S.C.No. 195/98 on the file of Prl. Sessions Judge, Cuddalore was directed to be released on bail as per order of this Court dt. 24/4/2000 and made in Crl.M.P. No. 2079/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
and
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 629 of 1999

1. Annadurai

2. Krishnamoorthy .. Appellants/Accused 1 & 2

-Vs-

State by Inspector of Police,
Kadampuliyur Police Station.
(Cr.No.617 of 1997) .. Respondent/Complainant

Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Cuddalore Division, Cuddalore, in S.C.No.195 of 1998 dated 29.7.1999.

* * * * *

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For Appellants : Mrs.P.V.Rajeswari

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

The appellants 1 and 2 have assailed the judgment of the Principal Sessions Judge, Cuddalore Division, Cuddalore, made in S.C.No.195/1998, finding A-1 guilty of the offence under Section 302 I.P.C., and sentencing him to undergo life imprisonment, while A-2 was found guilty of the offences under Sections 341 and 302 read with 34 of I.P.C., and sentenced to undergo life imprisonment for the offence under Section 302 r/w 34 I.P.C. and one month simple imprisonment for the offence under Section 341 I.P.C.

2. The short facts necessary for the disposal of this appeal are as follows:

(a) P.W.1, is the wife of the deceased. Her father-in-law one Ramachandran, has two wives. The first accused is the son of Ramachandran through his first wife. The second accused is the brother-in-law of the first accused. Ramachandran has two brothers by names Krishnamoorthy and Ramalingam. Ramachandran divided his 11 ½ cents of house site and gave one half to the first accused and the other half to the deceased. The deceased made an attempt to sell away the property; but, he could not do so. Just 10 days prior to the date of occurrence, the first accused fenced the entire property, though he did not own the same. The deceased questioned the same and thus, they were not in good terms. On 24.10.1997, when the accused and the deceased met in a relative's house while they were attending the 16th day ceremony of one Ramalingam, there arose a quarrel between them in respect of fencing of the entire land made by the first accused. After the ceremony, all the persons left the place at about 5 p.m. When the deceased was returning home, he was waylaid by the first and second accused. The second accused caught hold of the hands of the deceased and the first accused stabbed the deceased with M.O.1 knife on the left side of his chest. The occurrence was witnessed by P.Ws.1 to 4. On seeing the crowd, both the accused fled away from the scene of occurrence with the weapon of crime.

(b) P.W.1 went to Kadampuliyur Police Station at about 7.30 p.m. and gave a statement Ex.P1. P.W.9, the Sub-Inspector of Police, who was on duty at that time, registered a case in Crime No.617/97. The printed First Information Report, Ex.P10 was despatched to the Court immediately.

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3. P.W.10, the Inspector of Police, took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared Ex.P6, Observation Mahazar and Ex.P7, Rough Sketch. He conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared an Inquest Report under Ex.P.11. On 25.10.1997 at about 6.00 a.m., the Investigating Officer arrested the first accused. When he volunteered to give a confessional statement, it was recorded in the presence of witnesses. The admissible part is marked as Ex.P4. Consequent upon the same, he produced M.O.1 knife which was recovered under Ex.P5 mahazar.

4. Pursuant to the requisition forwarded by the Investigating Officer through a constable, P.W.5, the doctor attached to the Government Hospital, Panruti, conducted autopsy on the dead body and found the following injuries:-

> "1. An Obliquely placed (incised) stab wound on the left side of the chest in the left fifth intercostal space 2.5 cms x 1 cm x chest cavity depth covered with blood clots.
>
> 2. Diffuse contusion forehead, ante-mortem injuries."

The doctor issued post mortem certificate, Ex.P.3 wherein he has opined that the deceased would appear to have died of shock and haemorrhage.

5. On requisition given by the Investigating Officer, the material objects which were recovered from the place of occurrence, from the dead body of the deceased and the M.O.1, knife produced by the first accused were all subjected to chemical analysis, pursuant to which, the chemical analyst's report, Exs.P.14 and 15 and the serologist's report, Ex.P.16 were placed before the Court. On completion of investigation, the final report was filed by the Investigating Officer and the case was committed to the Court of Sessions and necessary charges were framed against the appellants/accused.

6. In order to substantiate the charges levelled against the appellants/accused, the prosecution marched 10 witnesses and marked 16 exhibits and 7 material objects. On completion of the evidence on the side of the prosecution, the appellants/accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them as false. No defence witnesses were examined. The trial Court, heard the arguments advanced by both sides and made a scrutiny of the materials available and ultimately, found the appellants/accused guilty as per the charges and awarded the punishment referred to above, which is the subject matter of challenge in this appeal.

7. Pending this appeal, the first appellant died on 30.8.2003 and

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the death certificate has also been produced before this Court. This fact is admitted by the prosecution. Hence, the appeal filed by the first appellant becomes abated.

8. Learned counsel appearing for the appellants interalia made the following submissions.

In the instant case, all the witnesses were examined and according to the prosecution P.Ws.1 to 4 are the eye -witnesses. The evidence of P.Ws. 1 to 4 would clearly indicate that they all came to the scene of occurrence after the occurrence was over and thus, they would have heard about the incident and would not have seen the occurrence. Hence, the lower Court ought to have rejected their evidence. Apart from that, the medical evidence is not supporting the prosecution case, since the injury found on the body of the deceased could not have been caused by M.O.1, knife and apart from that no human blood was found either in M.O.1 knife, or in M.O.6 earth, taken from the place of occurrence. P.Ws.1 to 4 are all relatives. Though there were independent witnesses, no one was examined before the lower Court. Added further learned counsel that the first appellant is dead and so far as the second appellant is concerned, the case of the prosecution is that he held the hands of the deceased at the time of occurrence. There is no materials available to show that he shared the common intention and that he had knowledge that the first accused was about to stab the deceased with the knife. Since the common intention has not been proved by the prosecution, the second accused has to be acquitted outright.

9. The Court heard the learned counsel for the State on the above contentions.

10. It is not in controversy that the deceased Thangarasu who sustained stab injuries was taken to the hospital. He died instantaneously at the scene of occurrence. Following the inquest by the Investigating Officer, the dead body was subjected to postmortem and P.W.5, the doctor attached to the Government Hospital, Panruti, issued the post-mortem certificate, Ex.P.3 from which it is quite evident that the deceased died out of shock and haemorrhage. The fact that Thangarasu died out of homicidal violence was never questioned by the accused either before the trial Court or before this Court and hence, it could be recorded so.

11. The prosecution has come forward to state that the first accused stabbed the deceased when the second accused was holding the deceased. In the instant case, the first accused is dead and the witnesses have spoken to the fact that the second accused was holding the deceased at the time of occurrence. In the absence of any material to show that the second accused shared the common intention, he cannot be held liable. There is nothing available to indicate that the second accused had knowledge that the first accused was about to stab

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the deceased at the time of occurrence. In view of the same, it cannot be stated that the second accused shared the common intention or that he had got the knowledge that the first accused was about to stab the deceased Thangarasu. Without any proof of the same, it would be highly difficult to accept the case of the prosecution that the second accused shared the common intention. Therefore, the second accused is entitled for an acquittal. Apart from that, there is no material placed before the Court that the second accused abetted the offence.

12. Under such circumstances, this Court is of the opinion that it is a fit case where the judgment of lower Court as far as the second accused is concerned, has got to be set aside. Accordingly, the conviction and sentence imposed on the second appellant/second accused by the lower Court for the offences under Sections 302 read with 34 and 341 I.P.C. are set aside, and he is acquitted of the charges framed against him.

13. In the result, the appeal abates in respect of the first appellant, since he is dead and the appeal is allowed in respect of the second appellant. It is reported that A2 is on bail. Bail bond executed by him shall stand cancelled.

vsi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE JUDICIAL MAGISTRATE
PANRUTI

2. - DO - THRO' THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE

3. THE INSPECTOR OF POLICE,
KADAMPULIYUR POLICE STATION

4. THE PRINCIPAL SESSIONS JUDGE
CUDDALORE

5. THE DISTRICT COLLECTOR
CUDDALORE

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6. THE DIRECTOR GENERAL OF POLICE
CHENNAI

7. THE PUBLIC PROSECUTOR
CHENNAI

8. THE SUPERINTENDENT OF POLICE
CENTRAL PRISON
CUDDALORE.

+ ONE CC TO MS.P.V. RAJESWARI, ADVOCATE (SR 30969)

Crl.A.No.629 of 1999

27.07.2005

TEJ (CO)

BP/3.8

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